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October 27, 2005

Mark Goodin, Esq.
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Buchanan for President, Inc., et al.
MUR 5430

Dear Mark:

I enclose an original and three copies of the "Reply Brief of Ms. Buchanan For President Committee". I have marked these documents as privileged and confidential because they contain reference to, and copies of, documents in particular The Affidavit of Ms. Buchanan and letter from myself and Alan Dye that were previously to be submitted under an agreement of confidentiality with the Commission. I request treatment in the same manner for this document as for the documents originally submitted.

In accordance with 11 C.F.R. § 4.5., Buchanan for President, Inc. and Angela M. "Bay" Buchanan, as Treasurer ("BFP") request confidential treatment of the affidavit and this letter describing the affidavit, each of which contains confidentiality legends. We request that BFP be provided with advance notice by telephone and facsimile or express mail of any request to the Commission to disclose these documents, so that BFP and its counsel may be heard on the question of the propriety of any proposed disclosure. Such notice may be provided to the undersigned. In addition, we request that the documents produced herewith be returned to BFP at the conclusion of the Commission's investigation.

Sincerely,

John J. Duffy

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 5430
Buchanan for President, Inc. and Angela M. "Bay" Buchanan, in her official capacity as Treasurer	)	

REPLY BRIEF OF BUCHANAN FOR PRESIDENT, INC.

I. COUNTER STATEMENT OF THE CASE

The Buchanan Fund was established during the process of refunding excess contributions that had been made to Buchanan Reform, Inc., Mr. Buchanan's primary committee during the 2000 Presidential election cycle. (Buch. Dep. at 25). Because many of the contributors to Buchanan Reform had not made the maximum allowable contribution to Buchanan For President, Inc. ("Buchanan '96"), the candidate's principal campaign committee in the 1996 election cycle, Ms. Buchanan asked them to re-designate their refunds to Buchanan '96.

Ms. Buchanan also sought to "capture" the refunds Buchanan Reform was making to those contributors who had maxed out to Buchanan '96. (Buch. Dep. at 26- 27). Ms. Buchanan testified to her concern that monies might be needed in the future and that "it's a lot easier to ask people to give money to us that they have already given to us." (Buch. Dep. at 26). With respect to the use she intended to make of the money, Ms. Buchanan stated that: "[t]he Buchanan Fund was not established with any particular purpose in mind, other than my desire to secure these funds for any future contingencies for which they could legally be used." (Buch. Aff. at 2.) She had no specific expenditures in mind, except that she did not intend to use these funds where

hard money" would be required by federal law." (Buch. Dep. at 28, Buch. Aff. at 2-3) She stated that she had a particular concern about lawsuits:

> [we] had been beset by litigation concerning Reform 2000 and Buchanan-Foster, and additional threats of litigation in connection with those matters had been made. In addition, I had the unpleasant personal experience of a mean-spirited lawsuit coming out of nowhere four years after a campaign. An individual to whom we owed nothing, but who believed he could extort funds from the candidate or committee, filed suit. He believed the candidate would rather pay than involve himself in a lawsuit. (Buch. Aff. at 2).

Ms. Buchanan established the Buchanan Fund after receiving advice of counsel that she did not need to formally identify the Buchanan Fund to the Federal Election Commission ("Commission or "FEC"), unless she intended to use the monies for purposes that would require "hard money," *i.e.*, "contributions" or "expenditures" as defined by the Federal Election Campaign Act of 1971, as amended. (the "Act"), which, as Ms. Buchanan has repeatedly testified, and as other facts corroborate, she did not.

Subsequently, Ms. Buchanan made a number of expenditures from the Buchanan Fund, which the General Counsel no longer questions here. Ms. Buchanan made two expenditures, however, that the General Counsel contends were "expenditures" under the Act, a payment of a law firm bill for services, some portion of which may have been for services rendered to Buchanan '96, although the bulk of the services were in connection with matters that were not subject to the Act, and a payment made in connection with MUR 4198, which the FEC had told Ms. Buchanan did not need to be made from "hard money." Although Ms. Buchanan's decision to make that payment from the Buchanan Fund may have been inappropriate, because the payment should have been made from a fines and penalties account, identified as such to the FEC, for which reports of receipts and expenditures had been filed, it was not a "contribution" to

Buchanan '96 or an "expenditure" on behalf of Buchanan '96, because the FEC had authorized Ms. Buchanan to make the payment from sources other than hard money. The General Counsel has not charged Ms. Buchanan with any violation of the regulations concerning the establishment and use of a fines and penalties account.

Ms. Buchanan's establishment of the Buchanan Fund for the purpose of making payments that did not require hard money, and consequently, her not filing reports and expenditures for the Buchanan Fund, were done with advice of counsel. They were legal at the time the Buchanan Fund was established and reattributed contributions that were made originally to Buchanan Reform were deposited in it. Both her testimony and the surrounding circumstances indicate that she took these actions with a firm belief that they were legal, and consequently, there is no support in the record for the General Counsel's contention that they constituted a knowing and willful violation of the Act. Her payment of a bill from a law firm that may have contained charges for services rendered in connection with Buchanan '96 was inadvertent. Her decision to raise additional funds for the Buchanan Fund after the Commission had told her that MUR 4198 could be resolved with money that was not "hard money," and her decision to make a payment to the federal treasury to resolve that MUR with monies from the Fund, did not constitute the receipt of "contributions" to, or the making of expenditures from, an un-reporting federal account, and even if they did, it was not a knowing and willful violation, because it was done by Ms. Buchanan with the understanding that it was sanctioned by the Commission.

II. ARGUMENT

A. The General Counsel's Brief Ignores Completely Those Portions of the Investigative Record That Refute His Conclusion That Ms. Buchanan's Alleged Violations Were "Knowing And Willful."

The General Counsel relies on only three "facts" to support his proposed finding of a "knowing and willful" violation: 1) Ms. Buchanan stated in a letter dated February 20, 2001 that the Buchanan Fund was established "with the advice of counsel" (Buch. Dep. Exh. 4); 2) Ms. Buchanan stated in the same letter that excess contributions re-designated to the Buchanan Reform Committee would be "used to pay campaign related expenses" (Buch. Dep. Exh. 4) (The "February 2001 Letter"); 3) Ms. Buchanan was specifically admonished in a previous matter for conduct similar to the conduct at issue here. (Buch. Dep. Exh. 27). The General Counsel's Brief ignores important portions of the factual record that bear on these three issues, including parts of Ms. Buchanan's deposition testimony, Ms. Buchanan's affidavit, which we are attaching to this Reply as Appendix A, and statements from two attorneys with whom Ms. Buchanan stated she talked about the formation of the Buchanan Fund, and who advised her that her proposal to establish a fund that did not register or file reports of receipts or expenditures with the FEC would not violate the federal election laws, which letters we are attaching to this document as Appendix B, and Appendix C. We urge the Commission to read these three critical documents.

B. Ms. Buchanan's Alleged Violations Were Not Knowing and Willful.

1. Ms. Buchanan Had, and Acted Consistently With, the Advice of Counsel In Setting Up The Buchanan Fund.

The General Counsel sought repeatedly during the investigatory phase of this proceeding to persuade Ms. Buchanan to waive the attorney-client privilege to allow her to present evidence that, when she established the Buchanan Fund and did not identify it to the Commission or report

its receipt and expenditures to the FEC , she acted on the advice of counsel, because acting with the advice of counsel would be a defense to a charge that she had committed a knowing and willful violation of the Act. Finally, Ms. Buchanan agreed. Ms. Buchanan filed an affidavit in which she stated that she recalled talking to an attorney about the matter, but did not recall which of the attorneys with whom she regularly did business had she consulted. (Appendix A at 2-3). Both of these attorneys submitted statements indicating that, although they did not recall a conversation with Ms. Buchanan about such matters -- a not unusual circumstance in view of the lapse of time -- the advice Ms. Buchanan claims that she received was the advice they would have given her. (Appendix B at 1); (Appendix C).

Ms. Buchanan's sworn statement that she recalls receiving advice from one or both of these lawyers, and their confirmation that they would have given her the advice she says that she received establishes that she acted with advice of counsel in forming the Buchanan Fund as a non-reporting committee. Advice of counsel need not be correct to prevent a finding of a specific intent to violate the law; the issue in question is the intent of the actor, not the correctness of the advice. If the actor thinks her actions are lawful, she does not have the requisite intent to support a knowing and willful finding. Similarly, advice that the client, in good faith, misunderstands can also rebut a knowing and willful finding. The letters from the attorneys provide a strong factual basis for the Commission to conclude that Ms. Buchanan could well have had conversations with an attorney about the establishment of the Buchanan Fund, as she stated under oath, and that she could, in good faith, have construed these conversations as advice of counsel that she could legally proceed in the manner that she did.

In his Brief, the General Counsel not only suggested that Ms. Buchanan was unable to support the defense that in setting up the Buchanan Fund, she relied on the advice of counsel --

although he does not mention any of the evidence discussed above -- but also states that "[b]ased on her inability to support her claim that the account was legally sanctioned, we infer that she recognized that the establishment of and deposit of excess contributions into the Buchanan Fund violated the Act, and that she asserted reliance on legal advice in order to encourage unlimited donations to the unreported account." (Br. at 7). This argument contains several factual and legal errors.

Contrary to the assertion of the General Counsel, the establishment of, and deposit of excess contribution into, the Buchanan Fund was not illegal. The General Counsel has not cited any authority -- and we are not aware of any -- that supports his suggestion that asking contributors to re-designate contributions to any organization other than a federal political committee or to deposit them into any account that is not identified to the FEC is a violation of the Act. Ms. Buchanan's decision to *establish* an unidentified and non-reporting account into which she deposited reattributed contributions was not a violation of any provision of the Federal Election Campaign Act of 1971, as amended. She had no obligation to identify the account, or report receipt and expenditures, to the Federal Election Commission, ***unless and until*** she intended to make "contributions" and "expenditures" under the Act with the monies collected. As Ms. Buchanan stated in her affidavit, however, at the time of the mailing of the February 2001 Letter, she "had no intention to use these funds where "hard money" would be required by law." (Appendix A at 2). Ms. Buchanan indicated, for example, in her affidavit that lawsuits were a concern when she decided to establish the Buchanan Fund, (Appendix A at 2). and the General Counsel concedes that an account established for the sole purpose of making payments related to non-enforcement related law suits would not have had to been reported to the FEC. (Br. at 4, n.7). Furthermore, the General Counsel asserts elsewhere in his Brief that the

Buchanan Fund became a campaign depository not when it accepted contributions, but when it allegedly paid " debts and winding down costs of the Candidate's 1996 campaign." (Br. at 4). Although we will have something to say about this conclusion later in this response, we agree that the Buchanan Fund became a political committee subject to the Act, if at all, only when it made expenditure that were "expenditures" under the Act, and those expenditures are limited to the alleged payment of legal expenses and possibly the payment of a penalty in connection with the "stale dated checks."

The General Counsel's "inference" (Br. at 7) that, when Ms. Buchanan sent the February 2001 Letter she "recognized that the establishment of, and deposit of excess contributions into, the Buchanan Fund violated the Act" but nevertheless "asserted reliance on legal advice in order to encourage unlimited donations to an unreported account" is fanciful and inconsistent with the facts. The February 2001 Letter was sent only to persons who had made excess contributions to Buchanan Reform and only asked them to "reallocate" the excess portion to the Buchanan Fund, which was generally small, but certainly limited. Thus, no "unlimited" contributions were sought or available. Indeed, Ms. Buchanan made no other solicitations for money for the Buchanan Fund until the Fall of 2001, after she had been told by the FEC that she did not need "hard money" to make the stale dated check repayment (Buch. Dep. at 39-42; Buch. Exh. 7), another matter that we shall discuss later in this response.

In fact, Ms. Buchanan's statement in the February 2001 Letter that she established the Buchanan Fund with "advice of counsel" supports her assertion that she established the Buchanan Fund with the advice of counsel, just as any other contemporaneous writing, such as a memo to the file, would. The General Counsel seeks to counter this natural inference by creating a motive for her to make a false statement about receiving advice of counsel, but he does not

succeed. Ms. Buchanan had no reason to assert in the February 2001 Letter that she had established the Buchanan Fund with the advice of counsel other than the obvious reason: she had.

2. Ms. Buchanan Explained In Her Affidavit That The Statement In The February 2001 Letter That The Reattributed Contributions Would Be "Used To Pay Campaign Related Expenses" Was Meant To Assure Contributors That The Monies Would Not Be Used For Mr. Buchanan's Personal Expenses.

The General Counsel noted (Br. at 8) that the February 2001 Letter stated that the Buchanan Fund would "be used to pay campaign related expenses," but he neglected to finish the quote. Ms. Buchanan went on to say " campaign related expenses which do not require 'federal dollars' for payment." (Buch. Dep. Exh. 4). Ms. Buchanan stated in her affidavit, (Appendix A at 2-3) that her reference in the February 2001 Letter to the 1996 and 2000 FEC audits was not intended to suggest how she was going to use the money, but rather to explain to the contributors why she was asking for money months after the 2000 election had taken place, *i.e.*, the campaigns are still operating because of FEC review. She noted in her affidavit that the February 2001 Letter reflects this intention, because it specifically states that the money will not be used for purposes that would require "hard money," or as she refers to them, "federal dollars." (Buch. Dep. Exh. 4). She further states that the reference to "campaign related expense" was intended only to assure the recipients of the February 2001 Letter that their funds would not be used for personal expenses, or some other expenses that had nothing to do with the campaigns (my new car, for instance), but rather expenses that would not have occurred if Pat had not run, but, again, not hard money expenses. It was not "campaign related" in the federal sense, only in the generic sense. Ms. Buchanan made a similar statement on her Application for Employer

Identification Number, where she identified the principal activity of The Buchanan Fund as "pay campaign debtor expenses not covered (under federal law)."

3. Ms. Buchanan Did Not Recall The Admonition When She Established the Buchanan Fund.

The General Counsel has also pointed (Br. at 7) to the Commission's letter of admonishment sent to Ms. Buchanan on August 30, 1999 with respect to MUR 4918 -- more than 18 months prior to the time she established the Buchanan Fund -- as evidence that she knew the establishment of the Buchanan Fund would be illegal. (Buch. Dep. Exh. 27.). However, the General Counsel mischaracterizes the facts surrounding that letter. Contrary to the General Counsel's suggestion, neither the '92 nor '96 campaign committees established a Compliance Fund that they claimed were "not subject to the Act." Both of the so-called Compliance Funds were identified to the Commission and filed reports of receipts and expenditures, and were apparently intended primarily to serve as fines and penalties accounts. The essential point of the Commissions letter is that the Committee had improperly made other payments from such an accounts, which by law it could not do.

As Ms. Buchanan states in her affidavit (Appendix A at 5) that Scott Mackenzie had been the person in charge of the day to day operations of the '92 and 96 campaign committees, and was the Treasurer of the two Compliance Funds for most, if not all, of the audit and close down. She was not, therefore, informed of the issues that may have been raised with respect to those funds.

In addition, MUR 4918 was not a matter to which her attention had been drawn. It did not follow the usual MUR process, with several documents from the Commission requiring responses from the Committee. As Chairman Thomas' letter reflects, the Commission found reason to believe that the Buchanan Compliance Fund '92 had violated 2 U.S.C. Section

441(a)(f) on August 17, 1999, and closed the matter on the same day. The Commission then sent the admonishment letter on August 30, 1999. Ms. Buchanan states that she did not examine the letter closely, since it stated that it involved the '92 campaign, focused on activities conducted by Mr. Mackenzie, and called for no action on her part. All she remembers taking from the letter and the attachments, and a brief discussion with her counsel, was that Mr. Mackenzie had established a compliance fund for a primary committee, which could not under the Commission's rules have a compliance fund. She did not recall this letter when she decided to establish the Buchanan Fund, more than eighteen (18) months later, nor did she believe the Buchanan Fund constituted a federal account of any type.

4. Ms. Buchanan Has Had More Than Thirty Years of Experience Running Campaigns, And If She Wanted To Hide The Buchanan Fund From the Commission, She Would Not Have Raised Money From Reattributed Contributions.

The General Counsel's position that Ms. Buchanan established the Buchanan Fund with the intent to "hide" it from the Commission can't be squared with Ms. Buchanan's experience and her decision to raise money from reattributed refund contribution check. The Buchanan Reform contribution refunds were made on checks drawn on the Buchanan Reform account, an account identified to the FEC and subject to audit. When the contributor reattributed the refund, he sent the Buchanan Reform check and the reattribution document to the Buchanan Fund, which negotiated the check by stamping Buchanan Fund on the Buchanan Reform check. The Buchanan Reform check then made its way, in due course, back to Buchanan Reform, where it became part of the required federal audit of that campaign. Ms. Buchanan knew all of these facts and knew the Commission's Audit Division would know of the existence of the Buchanan Fund. She made no effort to prevent that discovery. Ms. Buchanan's actions are inconsistent with an attempt to "disguise the source of the funds" coming to the Buchanan Fund, since the "source"

was a committee that was identified and reported expenditures to the FEC, and is, therefore, likewise " inconsistent with "a motivation to evade lawful obligations." *Cf .United States v Hopkins,* 916 F.2d. 207, 214-15. Ms. Buchanan's behavior is consistent, on the other hand, with the explanation she gave in her February 2001 Letter and that she had repeated throughout this proceeding: she thought it was legal.

C. Ms. Buchanan's Alleged Violations Were Inadvertent Failures To Pay Proper Attention to the Situation, Not Part of A Plan to Operate Outside Of the Requirements Of the Act.

The General Counsel alleges now only two violations of the Act (Br. at 3), a payment to a law firm and a payment to the treasury in connection with MUR 4918, although Ms. Buchanan made other disbursements out of the Buchanan Fund. If either was a violation of the law, it was inadvertent.[1] The payment to the law firm for services connected to Buchanan '96 was made when a bill covering a number of charges for several months services was paid. The invoice that was paid did not contain a specific designation of the services rendered, but only included the amounts due for those services in a lump sum identified as moneys owed from past statements. (Buch. Dep. Exh. 21).

Ms. Buchanan address the situation that caused her to raise money for the Buchanan Fund to pay the amounts required to resolve MUR 5192 in her affidavit. (Appendix A at 4).

> "The stale dated check conciliation agreement payment was not in my contemplation when I established the Buchanan Fund in February 2001. Buchanan '96 received MUR 5192 concerning the stale dated checks on April 9, 2001. At that time, we did not have sufficient money in the Buchanan '96 account to make this

[1] The General Counsel contends that Buchanan '96 received excess contribution because these two disbursements, which the General Counsel contends paid expenses connected with the 1996 campaign, made the Buchanan Fund an affiliated committee of Buchanan '96, but this is not a separate violation, but a violation inadvertently created by the disbursements.

payment nor did we have the ability to raise this amount of additional "hard money" funds for Buchanan '96 so long after the campaign, and after we had made so many additional requests to raise money with respect to other Buchanan '96 matters. Consequently, as my attorney's correspondence indicates, we were not able to agree to the make the payment suggested in the proposed conciliation agreement (Appendix 2).

Subsequently, my attorney was told by the General Counsel's office that the payment to resolve MUR 5192 did not need to be made with hard money, and in fact, could be made by funds from contributors who had already given their max to the Buchanan '96 campaign. He so advised me. I thought that, combined with the money I had in the Buchanan Fund, which I now believed could legally be used, I could raise sufficient non-hard money funds to make the payment. Consequently, my attorney sent a second letter to the Commission (Appendix 3). I proceeded to raise additional funds, depositing them in the Buchanan Fund and, subsequently made the payment to the United States Treasury. This was the only time I tried to raise money for the Buchanan Fund other than from refund checks. At all times, I thought the method I used to make this payment was legal and approved by the Commission's staff."

Her statements here are fully supported by the affidavit of her attorney, attached to this response as Appendix B.

VI. CONCLUSION

The Commission should reject the General Counsel's proposed findings, should find that Ms. Buchanan did not make a knowing and willful violation of the Act, that the payment to the law firm was improper, but inadvertent, require a reimbursement by Buchanan '96 to the Buchanan Fund, and close the file.

Respectfully submitted,

John J. Duffy

APPENDIX A

AFFIDAVIT OF ANGELA M. BUCHANAN

I, Angela M. Buchanan, depose and say that:

In late 2000 and early 2001, Buchanan Reform, Inc. ("Reform") was refunding excess campaign contributions to its contributors. At that time, Buchanan '96, Pat Buchanan's primary campaign committee for the 1996 election, had outstanding debts. I decided, therefore, to ask those contributors to whom Reform was refunding contributions if they would endorse their refund checks to Buchanan '96.

After establishing the list of contributors in need of refunds, Reform staff searched the Buchanan '96 contributor file to determine the status of the excess contributors with respect to the Buchanan '96 campaign. If the donor was a contributor to the Buchanan '96 campaign, the Reform staff determined if the refund check would put the donor over the legal limit for the '96 campaign, if such check were contributed to Buchanan '96. If the donor was not a previous donor, or if the refund check did not put the donor over the Buchanan '96 legal contribution limit, then a letter would be sent with the Reform refund check, requesting that the donor contribute the refund to Buchanan '96.

At no time did I intend to accept contributions for Buchanan '96 in excess of the legal limit. I tasked two experienced people, who were well aware of the need for accuracy in this effort, to check the contribution history and insure that none of the refunds were improperly directed. Unfortunately, the Buchanan '96 contribution file used for this process is no longer in existence, and so I can offer no explanation for the errors that apparently occurred.

When a Reform contributor had maxed out to Buchanan '96, I asked the contributor to endorse the refund check to another account that I had established, the Buchanan Fund. In

February 2001, Reform sent to such contributors the letter attached here as Appendix 1. (The same letter is attached to my deposition as Exhibit 4.) (I will hereafter refer to this letter as the February 2001 Letter.)

The Buchanan Fund was not established with any particular purpose in mind, other than my desire to secure these funds for any future contingencies for which they could legally be used. I had no intention to use these funds where "hard money" would be required by law, but I had no specific expenditures in mind. I was concerned about lawsuits, since we had been beset by litigation concerning Reform 2000 and Buchanan-Foster, and additional threats of litigation in connection with those matters had been made. In addition, I had the unpleasant personal experience of a mean-spirited lawsuit coming out of nowhere four years after a campaign. An individual to whom we owed nothing, but who believed he could exhort funds from the candidate or committee, filed suit. He believed the candidate would rather pay than involve himself in a lawsuit.

My reference in the February 2001 Letter to the 1996 and 2000 FEC audits was not intended to suggest how I was going to use the money, but rather to explain to the contributors why we were asking for money months after the 2000 election had taken place, i.e., the campaigns are still operating because of FEC review. The February 2001 Letter reflects my intention not to use the money for purposes that would require "hard money," or as I call them "federal dollars." My reference to "campaign related expense" was not to the contrary. I meant only to assure the recipients of the February 2001 Letter that their funds would not be used for personal expenses, or some other expenses that had nothing to do with the campaigns (my new car, for instance), but rather expenses that would not have occurred if Pat had not run, but, again, not hard money expenses. It was not "campaign related" in the federal sense, only in the generic

sense. It is in this spirit that I wrote "will be used to pay campaign related expenses, which do not require federal dollars for payment." The Buchanan Fund was set up to give me some means to deal with these kinds of expenses.

As the phrase "advice of counsel" indicated, I recall talking to counsel about my intention to ask contributors who were to receive refunds to reallocate those funds either to Buchanan '96 or a separate fund that would not make "hard money" expenditures, and that counsel advised me that such actions were legal and would not violate the federal election laws.

I never intended to use these funds to make payments requiring hard money, and, to my thinking, I did not do so. Most of these expenses paid from the Buchanan Fund, I believe, could not have been paid with federal funds, because they would have constituted duplicate payment or would have been payments made without adequate documentation. I was faced, for example, with a lawsuit in Oklahoma by a subcontractor with whom we had no contract, because she claimed the prime contractor had failed to pay her. The prime contract was for assistance with ballot access for the 2000 campaign. I had paid the prime contractor in full and, consequently, did not believe I could pay the subcontractor with federal funds. I was advised by my Oklahoma attorney to settle the matter and did so with a payment from the Buchanan Fund. In other words, if I made these payments with hard money, the auditors would have required a repayment to the Treasury with "hard money." Similarly, in the case of the Jim Logue payment for expenses incurred in connection with ballot access for the 2000 campaign, I believed I could not pay him out of federal funds, because he had no documentation for these expenses, and because it was ballot access, I did not believe it was necessary to use federal funds. Perhaps I made an incorrect assessment of these matters, but I assure you that my assessment was made in good faith with no thought that these payments were illegal or inappropriate.

This is also true with respect to the payment made from the Buchanan Fund to satisfy a conciliation agreement entered into with respect to MUR 5192. The stale dated check conciliation agreement payment was not in my contemplation when I established the Buchanan Fund in February 2001. Buchanan '96 received MUR 5192 concerning the stale dated checks on April 9, 2001. At that time, we did not have sufficient money in the Buchanan '96 account to make this payment nor did we have the ability to raise this amount of additional "hard money" funds for Buchanan '96 so long after the campaign, and after we had made so many additional requests to raise money with respect to other Buchanan '96 matters. Consequently, as my attorney's correspondence indicates, we were not able to agree to the make the payment suggested in the proposed conciliation agreement (Appendix 2).

Subsequently, my attorney was told by the General Counsel's office that the payment to resolve MUR 5192 did not need to be made with hard money, and in fact, could be made by funds from contributors who had already given their max to the Buchanan '96 campaign. He so advised me. I thought that, combined with the money I had in the Buchanan Fund, which I now believed could legally be used, I could raise sufficient non-hard money funds to make the payment. Consequently, my attorney sent a second letter to the Commission (Appendix 3). I proceeded to raise additional funds, depositing them in the Buchanan Fund and, subsequently made the payment to the United States Treasury. This was the only time I tried to raise money for the Buchanan Fund other than from refund checks. At all times, I thought the method I used to make this payment was legal and approved by the Commission's staff.

Finally, the Commission's staff has pointed to the Commission's letter of admonishment sent to me on August 30, 1999 with respect to MUR 4918 and the "Buchanan Compliance Fund '92," as evidence that I knew the establishment of the Buchanan Fund would be illegal.

First, you should be aware that Mr. Scott Mackenzie had been the Treasurer of Mr. Buchanan's 1992 and 1996 campaign committees, including the so-called Buchanan Compliance Fund '92 and Buchanan Compliance Fund '96 during the campaigns, and was the Treasurer of the two Compliance Funds for most, if not all, of the audit and close down. I was not, therefore, involved in the issues that may have been raised with respect to those funds.

Second, MUR 4918 was not a matter to which my attention had been drawn. It did not follow the usual MUR process, with several documents from the Commission requiring responses from the Committee. As Chairman Thomas' letter reflects, the Commission found reason to believe that the Buchanan Compliance Fund '92 had violated 2 U.S.C. Section 441(a)(f) on August 17, 1999, and closed the matter on the same day. The Commission then sent the admonishment letter on August 30, 1999. I did not examine it closely, since it involved the '92 campaign, focused on activities conducted by Mr. Mackenzie, and called for no action on my part. All I remember taking from the letter and the attachments, and a brief discussion with my counsel, was that Mr. Mackenzie had established a compliance fund for a primary committee, which could not under the Commission's rules have a compliance fund. I did not recall this letter when I decided to establish the Buchanan Fund, more than eighteen (18) months later, nor did I believe the Buchanan Fund constituted a federal account of any type.

I greatly regret my failure to take adequate care in my handling of the monies I received from the reallocation of the Reform refunds. I can assure you, however, that I had no intention in reallocating funds to Buchanan '96 to create a situation in which additional excess contributions were created. Likewise, I had no intention in establishing the Buchanan Fund or in its operation to create excess contributions. I did not register the Buchanan Fund, because I intended to use it for non-"hard money" purposes. I had no intention to "hide" it and, indeed,

since I used refund checks from 2000 contributions to Reform that were subject to audit to fund it, stamping each of these checks, when they were returned by the contributors, for deposit in the Buchanan Fund, it would have been obvious that it could not be "hidden."

I have served as Treasurer of various political committees since I served as national Treasurer of the Reagan for President Committee in 1979. During this time I have worked diligently to comply with all aspects of the federal election laws, and I would not knowingly or willfully violate any of these laws.

District of Columbia

Angela M. Buchanan

Subscribed and sworn to before me this 11th day of April, 2005.

Notary Public

My Commission expires:

FADA S. CHACONAS
Notary Public, District of Columbia
My Commission Expires July 14, 2006

26044134596

APPENDIX 1

February 20, 2001

Pre
Addr1
Addr2
City

Dear

The enclosed check represents the contributions you made to our campaign that exceeded the legal limit on contributions to federal election campaigns. Once again, on behalf of my brother Pat and everyone who worked on our campaign, I want to thank you for your generosity and commitment!

Although the enclosed check is certainly yours to keep, I want to share with you a situation we are facing that would be aided tremendously if you decide to send your check back to us instead of depositing it.

The Federal Election Commission is now only finalizing its audit of Pat's 1996 campaign. The federal auditors have not even begun their work on the 2000 campaign, so we will not know what amount of repayment they will demand for several years. Be assured, however, like taxes, repayment is a certainty. For this reason, and with the advice of counsel, I have established "The Buchanan Fund." It will be used to pay campaign related expenses, which do not require "federal" dollars for payment. This means we may ask for contributions even from those who have given the maximum contribution of $1000.00 to the campaign.

If you would be willing to endorse the enclosed check to "The Buchanan Fund" that would be an enormous help to me as I prepare to meet all the government demands. Again, your contribution to this fund is separate from your generous contributions to Pat's campaigns, and will be used only for campaign related expenses.

I want to thank you again for all you did for us in this campaign, and to express in advance my appreciation for whatever you can do. I hope to hear from you soon.

Sincerely,

Bay Buchanan

Bay Buchanan

APPENDIX 2

STEPTOE & JOHNSON LLP
ATTORNEYS AT LAW

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May 9, 2001

Via Facsimile and Hand Delivery

Jamila Wyatt, Esq.
Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20240

Re: MUR 5192

Dear Jamila:

As I told you during our recent telephone conversation, Buchanan '96 estimates that it might be able to raise between $15,000 - $18,000 to resolve MUR 5192. Since the campaign ended, the Committee has made repeated requests to donors for monies to resolve FEC matters. The Committee has made repayments of $29,328 for the LRA 466 repayment determination and $63,750 for the LRA 512 supplemental repayment determination, as well as a civil penalty of $35,000.

We urge the General Counsel to accept payment of this amount and resolve this matter without the expenditure of further resources.

I want to thank you for your cooperation in this matter, and I look forward to receiving your response.

Sincerely,

John J. Duffy

cc: Ms. Angela Buchanan

APPENDIX 3

STEPTOE & JOHNSON LLP
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June 1, 2001

Via Fascimile and Hand Delivery

Jamila Wyatt, Esq.
Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20240

Re: MUR 5192

Dear Jamila:

As you requested, I am setting forth below our proposal for the pre-probable cause settlement of the above referred matter. As I stated in my prior letter, Buchanan '96 estimates that it might be able to raise between $15,000 - $18,000 to resolve MUR 5192. Since the campaign ended, the Committee has made repeated requests to donors for monies to resolve FEC matters. The Committee has made repayments of $29,328 for the LRA 466 repayment determination and $63,750 for the LRA 512 supplemental repayment determination, as well as a civil penalty of $35,000. Consequently, the Committee believes that its chances of raising significant additional amounts of money are small.

After our discussions, however, the Committee is now prepared to agree to pay the full amount of the stale dated checks, $27,431, if the General Counsel agrees to recommend this amount to the Commission.

We urge the General Counsel to accept payment of this amount and resolve this matter without the expenditure of further resources.

I want to thank you for your cooperation in this matter, and I look forward to receiving your response.

Sincerely,

John J. Duffy

cc: Ms. Angela Buchanan

APPENDIX B

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PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT WORK PRODUCT

April 13, 2005

Via Hand Delivery and Facsimile

Mark Goodin, Esq.
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Buchanan for President, Inc., et al.
MUR 5430

Dear Mark:

As you requested, I am supplementing Ms. Buchanan's recently submitted affidavit with respect to the advice of counsel that she indicates she recalls receiving concerning the reallocation of refunds sent by Buchanan Reform, Inc. ("Reform") to certain of its contributors. Ms. Buchanan has reviewed this letter and has authorized me to make these disclosures.

I have reviewed my files, and I have no letters, emails, or other documents providing advice to Reform or Ms. Buchanan concerning the reallocation by Reform to Buchanan for President ("Buchanan '96") or Buchanan Fund. In addition, I have no recollection of discussing the reallocation of these contributions with Ms. Buchanan or other representatives of Reform. I do not view this as unusual in light of the time that has passed -- more than three years -- since the conversation may have taken place.

I can say, however, that had I been asked, I would have advised that Reform contributors could reallocate their refund checks to Buchanan '96, provided they had not "maxed-out" to that committee, or to some other entity, provided that entity could lawfully receive the monies, which many entities could. A fines and penalty account for Reform, for example, would be such a separate account or fund that could receive the monies. An account established to pay the costs of "recounts" in a federal election or litigation concerning a recount would be another example of such a separate fund that could receive reattributions. Whether the entity would have to register with the Federal Election Commission would depend, of course, on the use to be made of the monies, and whether such uses required "hard money."

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Ms. Buchanan also noted that she had been advised that the payment to resolve MUR 5192 did not need to be made with hard money, and in fact, could be made with funds from contributors who had already given the maximum allowable contribution to the Buchanan '96 campaign. I conveyed this information to Ms. Buchanan. Negotiations between Buchanan '96 and the Commission concerning the conciliation agreement in MUR 5192 centered on the Committee's ability to pay the monies demanded by the Commission. At the time, I believed the payment required hard money. At that time, I talked to Ms. Buchanan who indicated that she could not raise the necessary funds in hard money, because so many other demands on the '96 Committee's contributor base had been made, and it was exhausted. Consequently, on May 9, 2001, I wrote to the Commission to indicate our dilemma and ask for a reduction to an amount that Ms. Buchanan thought was the maximum possible amount she could raise. Subsequently, I received a telephone call from the attorney in charge of the case who indicated to me that hard monies were not required and the payment could be made with funds donated by contributors who had maxed out. I asked her to check with her supervisor to confirm this advice. She later called me to indicate that she had done so and that her advice was correct. I conveyed this information to Ms. Buchanan who indicated that she thought she could raise the necessary funds to make the payment, if she could raise it from maxed-out donors. I then wrote to the Commission the letter dated June 1, 2001 confirming that, based on our conversation, we could now make the payment.

Sincerely,

John J. Duffy

APPENDIX C

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April 15, 2005

Mark Goodin, Esquire
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Buchanan for President, Inc. et al
MUR 5430

Dear Mr. Goodin;

Bay Buchanan has asked me to send you the following information.

From the early 1990's to the present, our firm has provided legal advice to Ms. Buchanan and the various organizations with which she is involved, including Buchanan for President, Inc. Ms. Buchanan believes that she talked to me or another lawyer regarding the establishment of a non-political fund. I do not remember the conversation specifically, but I do know the advice I would have given if I were asked.

According to Ms. Buchanan, the situation presented involved persons making contributions to Buchanan for President in excess of amounts allowed by the Federal Election Campaign Act. Ms. Buchanan wished to know whether she could return the contributions to the contributors and ask them instead to make the contributions to a separate organization, which would not engage in activities regulated by the Federal Election Campaign Act. If I were asked this question, I would certainly have answered that such a course of action is permitted. There is nothing that I know of in the Federal Election Campaign Act which would prevent a person operating a political committee from also being involved in non-political activity and from requesting contributions for such activity from the same people who make contributions to the political committee.

Obviously, such funds could not be used for activity regulated by the FECA, but only for activities which are not regulated.

It would seem to me that the above is not really subject to doubt.

Very truly yours,

Alan P. Dye

Alan P. Dye